REMARKS / ARGUMENTS

Reconsideration of the application as amended is respectfully requested.

The applicant wishes to note that the Office Action summary incorrectly identifies the number and quantity of claims pending as Claims 14-20. In the previous amendment, Claims 27-57 were added, and the appropriate fee submitted for the excess number of claims. To briefly summarize, the previous amendment included three independent claims - Claim 14, Claim 15 and Claim 16, respectively. Claim 14 and dependent Claims 17-20 and 27-33 formed a single series of claims. Claim 15 and dependent Claims 34-44 formed a separate and single series of claims. Claim 16 and dependent Claims 45-57 formed a separate and single series of claims, as well.

At present, and as suggested by the examiner, Claim 17 has been amended so as to combine and incorporate the subject matter of Claim 14 and Claim 17, respectively, into a single allowable independent claim. Thus, Claim 17 is considered allowable and patentably distinct over the prior art in accordance with the examiner's recommendation.

Claims 14 and 15 have been amended to overcome the 35 U.S.C. § 112, 2nd Paragraph rejection for lack of antecedent basis of the terms noted by the examiner. Withdrawal of this rejection is respectfully requested.

The examiner rejected Claims 14-16, 18 and 19 under 35 U.S.C. § 102(b) as being anticipated by Twizzlers(TM) candy. And, similarly, claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Twizzlers(TM) candy in view of Markham et al. However, it is felt that far too much is being read into such a "reference" as Twizzlers(TM) candy. Candy is

an ornamental design for a confection, at best. Nowhere in this "reference" are there 'ribs'; however, assuming, arguendo, that 'ribs' exists, there are in no way interstitial spaces capable of cooperatively impinging at least one consumable treat. Attorney for applicant has tried to force a consumable treat in a way to be held cooperatively between the Twizzlers(TM) 'ribs', but has been unsuccessful in achieving such a result. Therefore, it is requested that the examiner provide further evidence of the disclosure of the functional features of Twizzler(TM) candy as soon as practicable during prosecution. *See* In re Eynde, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of [judicial] notice.").

Further, when a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons. *See* 37 C.F.R. § 1.104(d)(2).

More specifically, each one of the Claims 14-16 discloses a pet chew toy. A Twizzler(TM) is a consumable product that is incapable of functioning as a pet chew toy, aside from the brief period of time when the pet masticates the Twizzler(TM), swallows the chewed Twizzler(TM) and begins digestion of the Twizzler(TM). At a minimum, the description of a pet chew toy implies or suggests an apparatus that is not intended to be consumed, but rather repeatedly used by the pet for play and for strengthening the gums and jaws of the pet. A Twizzler(TM), if chewed by the pet, is incapable of repeated usage as a pet toy (and especially a

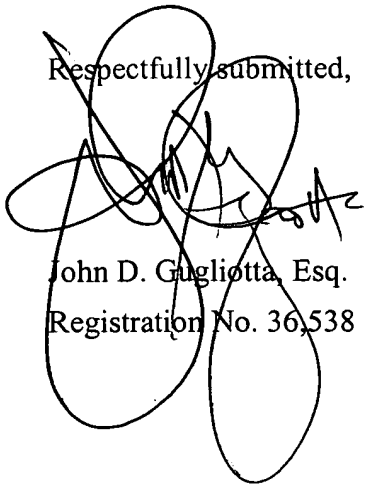
pet chew toy), and cannot function as a toy for strengthening the gums and jaws of the pet. Thus, a Twizzler(TM) is incapable of functioning in the same manner as the present invention, and fails to disclose every element of the claims as arranged in the claims.

Furthermore, each one of the Claims 14-16 discloses a body member having a plurality of ribs with an interstitial space formed between adjacent ribs so that the spaces and the ribs cooperatively impinge at least one consumable treat. A Twizzler(TM) does not possess the plurality of ribs and the corresponding interstitial spaces that cooperatively impinge at least one consumable treat. As noted previously, attorney for the applicant has attempt to impinge various consumable items within the 'ribs' of a single Twizzler(TM) and has been unsuccessful in impinging any of the consumable items therein. Thus, the Twizzler(TM) fails to disclose a plurality of ribs and corresponding spaces for cooperatively impinging a consumable treat. Therefore, the Twizzler(TM) fails to disclose every element of the Claims 14-16 as arranged in the respective claims, thus Claims 14-16 are patentably distinct over the prior art reference (Twizzler(TM)) cited by the examiner. Withdrawal of this rejection is respectfully requested.

Because the Twizzler(TM) fails to disclose each and every element of the underlying independent claims (Claims 14-16), the Twizzler(TM) in combination with any other reference also fails to disclose all the elements of the claims when used for rejecting claims under 35 U.S.C. § 103(a). Thus, all the rejections noted by the examiner under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) are inappropriate, and the claims are patentably distinguishable over the Twizzler(TM) and / or combination of Twizzler(TM) and Markham et al. Withdrawal of all rejections to the claims is respectfully requested.

Therefore, in view of foregoing amendments and clarifications, the applicant submits that allowance of the present application and all remaining claims, as amended, is in order and a formal Notice of Allowance is respectfully requested at the earliest possible date.

Respectfully submitted,



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